

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARIAELENA CUNHA,

Plaintiff,

v.

CV 12-1115 WPL

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

ORDER

This matter is before the Court on Plaintiff's motion for an award of attorney fees under the Equal Access to Justice Act. (Doc. 27.) Defendant does not object to the motion. (Doc. 28.) Having reviewed the motion, the response, and the record, I find that an award of fees is appropriate but the amount of fees requested is unreasonable. As I noted in my order granting the motion to remand, Plaintiff stumbled by a glaring legal issue that clearly warranted remand, but she failed to identify and fully address this error. (Doc. 25 at 13-17.) She claims that she spent a total of 12.5 hours reviewing the record and preparing the motion to remand; yet, she failed to raise an issue that I caught almost immediately. Accordingly, I will not award her fees for the full 12.5 hours, and I will reduce the award to reflect hours of work. I believe that based on the rate at which Plaintiff's attorneys work, nine hours would have been a sufficient amount of time to review the record, identify the error, conduct research, and prepare a brief raising this issue. With this reduction in mind, Cunha is entitled to fees for .3 hours at \$184 per hour and 13.9 hours at \$185 per hour, for a total of \$2,626.70.

IT IS THEREFORE ORDERED THAT the motion is granted in part and denied in part, and Plaintiff is awarded \$2,626.70 in attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). *See Astrue v. Ratliff*, --- U.S. ---, 130 S. Ct. 2521, 2525-27 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED THAT, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

William P. Lynch

William P. Lynch
United States Magistrate Judge

A true copy of this order was served
on the date of entry--via mail or electronic
means--to counsel of record and any *pro se*
party as they are shown on the Court's docket.